

## **9 FAM 41.103 PROCEDURAL NOTES**

*(CT:VISA-809; 05-09-2006)  
(Office of Origin: CA/VO/L/R)*

### **9 FAM 41.103 PN1 FORM DS-156, NONIMMIGRANT VISA APPLICATION**

#### **9 FAM 41.103 PN1.1 Use and Filing of Form DS-156, Nonimmigrant Visa Application**

*(TL:VISA-577; 08-27-2003)*

- a. Form DS-156, Nonimmigrant Visa Application, is the application form prescribed under INA 222(c). All items on the Form DS-156, and on any supporting forms (Form DS-157, Supplemental Nonimmigrant Visa Application, and/or Form DS-158, Contact Information and Work History for Nonimmigrant Visa Applicant) must be completed. In addition to information concerning the issuance or refusal of the visa, the following information is to be included on the form in the space reserved for office use:
  - (1) Record of clearances obtained, including the dates;
  - (2) Record of revocation and cancellation of visa;
  - (3) Any further information which would be helpful in reaching a decision if the alien reappplies for a visa (i.e., a note that the applicant is well and favorably known to the consular officer might eliminate the need for requests for other evidence of eligibility);  
and
  - (4) Record of re-issuance of visa (in the event a previous visa is spoiled or cancelled).
- b. Notwithstanding information that may be recorded on the Form DS-156, consular officers are reminded that electronic comments must be entered for each refusal, so that the database record contains an indication of the evidence that led the adjudicating officer to refuse the visa. The electronic record and the Form DS-156 with notes are complementary, and need not duplicate notes, although both must provide an indication of the reasons for the visa decision.

## **9 FAM 41.103 PN1.2 When Form DS-156, Nonimmigrant Visa Application, Constitutes Application**

*(TL:VISA-387; 04-09-2002)*

Form DS-156, Nonimmigrant Visa Application submitted at the time an appointment is scheduled, constitutes an application if the scheduling process involves substantive actions or pre-screening. An example is a system where consular personnel pre-screen the Form DS-156 and determine whether or not an interview is required in each case. Aliens whose applications do not appear to be "clearly approvable" on the basis of the information provided are given appointments.

## **9 FAM 41.103 PN1.3 Applicant Who Fails to Appear for Interview**

*(TL:VISA-387; 04-09-2002)*

If an applicant fails to appear for an interview, he or she should be refused under INA 221(g). That applicant's Form DS-156 should be annotated "interview required - applicant failed to appear for appointment." The applicant's record in the nonimmigrant visas (NIV) system should be adjudicated to reflect the INA 221(g) refusal and closed. Posts are reminded that an applicant may not be refused under INA 214(b) without an interview.

## **9 FAM 41.103 PN1.4 Open Cases and Fee Payment**

*(TL:VISA-387; 04-09-2002)*

There are a wide variety of off-site fee payment procedures. All applicants, however, should be able to demonstrate that they have paid the required fee(s). Cases should not be kept open in the NIV database merely to flag a case as "fee paid" if the case is inactive.

## **9 FAM 41.103 PN1.5 Supplemental Data to Determine Eligibility**

*(TL:VISA-577; 08-27-2003)*

If additional data is needed to supplement the information contained on Form DS-156 so that the consular officer can determine the eligibility of an applicant, such data should be obtained by telephone, mail, or during the interview. Pertinent information should be recorded on Form DS-156, or any pertinent documentary evidence submitted by the applicant attached to the DS-156 for filing. Consular officers should avoid routinely retaining

documents that may be submitted in support of an NIV application but which do not directly serve to establish the applicant's eligibility. These documents may be returned to the applicant or destroyed.

## **9 FAM 41.103 PN1.6 Affixing Photograph to Form DS-156, Nonimmigrant Visa Application**

*(TL:VISA-467; 10-02-2002)*

Photographs may be stapled or glued to Form DS-156, Nonimmigrant Visa Application. (See 9 FAM 41.113 PN1.2.)

## **9 FAM 41.103 PN2 TRANSLATING VISA FORMS**

### **9 FAM 41.103 PN2.1 Authorizing Translation of Nonimmigrant Visa (NIV) Forms**

*(CT:VISA-809; 05-09-2006)*

Posts may translate nonimmigrant visa (NIV) forms, including Form DS-156, Nonimmigrant Visa Application; Form DS-157, Supplemental Nonimmigrant Visa Application; and Form DS-158, Contact Information and Work History for Nonimmigrant Visa Applicant, locally, provided the translation is accurate and the layout of the translated forms look as much like the English versions as possible. Department approval is not required for translation, however, posts must forward a copy of the translation to the Department (CA/VO/F/P).

### **9 FAM 41.103 PN2.2 Availability of Translations of Nonimmigrant Visa (NIV) Forms**

*(CT:VISA-809; 05-09-2006)*

Posts may request copies of Form DS-156, Form DS-157 and Form DS-158 in the following languages from the posts indicated below:

<b>LANGUAGE</b>	<b>POST</b>
Arabic	Cairo
Chinese	Hong Kong
Dutch	Amsterdam
French	Paris
German	Bonn

Portuguese

Lisbon

Russian

Moscow

Spanish

Santo Domingo

## **9 FAM 41.103 PN3 DELETION OF NONIMMIGRANT VISAS (NIV) CASES**

### **9 FAM 41.103 PN3.1 Efforts Made to Close Nonimmigrant Visas (NIV) Cases**

*(TL:VISA-616; 04-28-2004)*

Visa officers (VO) must follow 9 FAM 41.121 PN1.1 instructions to issue *or* refuse cases at the time of application. This allows cases to be closed out and minimizes the circumstances in which the question of deletion will arise. As a general rule, cases should be deleted only as a last resort when no other action is possible to close the record. That said, posts should attempt to ensure that open cases are not allowed to build up on the system. Posts must periodically review cases in open status and resolve them, closing where possible and deleting where necessary. Most cases which are not properly closed on the system will normally be associated with appointment systems as discussed below or with failure to complete questions and answers (QA) procedures. Only consular officers may authorize the deletion of a case. The accountable consular officer (ACO) or appropriate consular manager must review end-of-day reports daily to monitor deletions, paying close attention to the reason for deletion in each case.

### **9 FAM 41.103 PN3.2 Deletion Does Not Purge Consular Consolidated Database (CCD) records**

*(TL:VISA-616; 04-28-2004)*

Deletion of nonimmigrant visas (NIV) records is a tool to be carefully used at post to help ensure the accuracy of post records and the Consular Consolidated Database (CCD). Deleted cases are no longer visible to post. However, deleted cases remain in the CCD and can be retrieved and reviewed by the Department.

### **9 FAM 41.103 PN3.3 Procedures when Provisional Cases Created with Appointment Systems**

*(TL:VISA-616; 04-28-2004)*

Some posts, particularly those using third-party information service providers or banks to assist them with data-entry, may be implementing appointment systems in which provisional cases are created when an appointment is made. Posts may delete cases if the applicant fails to appear for his or her appointment only if an application has not been formally made. If an application has been made (refer to 9 FAM 41.103 N5), consular officers must formally refuse the applicant under INA Section 221(g) even if he or she fails to appear for the interview (9 FAM 41.103 PN1.3). Provisional cases should not be created for purposes of showing fee paid status or to begin clearance procedures prior to actual application (9 FAM 41.103 PN1.4). Posts using Remote Data Entry System (RDS) should pay careful attention to data quality prior to uploading cases to minimize the need to delete cases.

### **9 FAM 41.103 PN3.4 Deletion of Duplicate Cases**

*(TL:VISA-616; 04-28-2004)*

From time to time post may find that duplicate cases have been created, either due to human error or problems associated with the database locking out an earlier case. If a single application has been entered more than once, it is appropriate to delete the duplicate cases. In fact, posts should take any steps necessary to ensure that the database accurately reflects applications submitted. Once a case has been printed on a visa foil, it cannot be deleted. A case in a refused status cannot be deleted. In both instances, the automated visa processing system will not allow the deletion. Consular officers must take particular care to ensure that proper procedures are followed with overcoming previous refusals. If post discovers that a case has been "opened for overcome and/or waive" in error, the case should be re-refused under 221(g) with a comment or case note reflecting the error. The case should not be deleted.

### **9 FAM 41.103 PN3.5 Applicants Refused if Visa Abandoned**

*(TL:VISA-616; 04-28-2004)*

If the case has been adjudicated (print authorized), but not printed, and the applicant subsequently changes his or her mind, deciding not to travel, the case should not be deleted, but should be refused 221(g) with case notes indicating why the action was taken.

### **9 FAM 41.103 PN3.6 Applicants Refused if Application Withdrawn**

*(TL:VISA-616; 04-28-2004)*

If an applicant withdraws a visa application while it is pending adjudication, the case should not be deleted but should be refused 221(g) with case notes indicating why the action was taken.

## **9 FAM 41.103 PN4 REGULATIONS PROHIBITING PRIVATE ADVERTISING ON U.S. GOVERNMENT FORMS**

*(TL:VISA-540; 05-19-2003)*

a. U.S. Government printing regulations provide that:

"No Government publication or other Government printed matter, prepared or produced with either appropriated or non-appropriated funds or identified with an activity of the Government, shall contain any advertisement inserted by or for any private individual, firm, or corporation; or contain material which implies in any manner that the Government endorses or favors any specific commercial product, commodity or service."

b. Permitting the name and address of any carrier or travel agent or any private commercial slogan to appear on any U.S. Government form would represent a violation of the above regulation, even if the form was printed at private expense.

## **9 FAM 41.103 PN5 INTAKE: PROCEDURES FOR SUBMITTING APPLICATIONS TO CONSULAR SECTION**

*(TL:VISA-577; 08-27-2003)*

a. Completed visa applications, passports, photos, evidence of payment of machine readable visa (MRV) fee and appropriate supporting documents may be submitted to the consular section for processing in a number of ways as discussed below. Regardless of the intake procedure following, consular officers must bear in mind the following:

(1) Intake procedures constitute an avenue for the transfer of physical documents and, in some cases, electronic data to the consular section for processing. They are essentially mechanical and do not reflect on the applicant's qualifications for a visa. In other words, any value added by a third party service provider must take the form of clerical or communication support (for example in typing forms or hand-delivering documents to the visa section). Care must be taken to avoid the appearance or implication of third party

evaluation of visa applications.

- (2) Consular managers must carefully evaluate local operating needs and conditions to structure intake procedures that provide adequate oversight and internal controls. This is particularly important when control of issued visas is involved.
  - (3) Regardless of the method of intake used, consular officers must ensure that all regular processing requirements, including personal appearance instructions outlined in 9 FAM 41.102 are met.
  - (4) It is possible to use intake procedures that allow advance or unattended submission of documents (e.g., mail or drop box) even for applicants who must be interviewed. This may allow post to more effectively complete data entry and initial processing requirements prior to interview. Consular managers must carefully consider workload and accountability implications of such a process, however. It will normally be best to use such unattended intake procedures in cases where personal appearance of the applicant may be waived per 9 FAM 41.102.
- b. Walk-in Applicants–In many posts, the majority of applications will be hand-carried by the applicants, who may appear at the consular section with or without a appointment. Posts should normally assign document screening responsibilities to a foreign service national (FSN), who will be responsible for reviewing applications for completeness. Consular managers must establish procedures to ensure that completed applications are accepted and that FSN personnel do not inappropriately defer or refuse processing.
  - c. On-Line Applications and Bar-Coding–Posts may encourage applicants to use the Bureau of Consular Affairs (CA) online fillable forms and print the completed form with 2-D barcode. When this is done, the applicant delivers the application to the consular section and the barcode is used to facilitate data entry. Only CA applications may be used for this purpose. These on-line tools may be used to complement various intake procedures.
  - d. Drop box–Applicants for whom personal appearance may be waived as discussed in 9 FAM 41.102 may submit applications through a “drop box.” The term “drop box” may cover a variety of mechanisms, ranging from a physical locked box with a mail slot located at post’s information booth, machine readable visa (MRV) cashier or other location to arrangements with U.S. business or organizations for collection and delivery of applications that qualify for personal appearance waivers. Systems that allow applicants to mail or courier applications are another form of “drop box” program.
  - e. With any drop box procedure, consular managers must ensure that:

- (1) Criteria for inclusion are clearly stated in writing and are in full compliance with 9 FAM 41.102;
- (2) Post has developed explicit written standard operating procedures for accounting for and controlling documents; and
- (3) Internal controls procedures have been developed to prevent manipulation of drop box procedures by guards, courier service personnel or other service provider.

f. Travel agency:

- (1) Many applicants will choose to use the services of a travel agent to facilitate the visa application process. This will take various forms, from providing forms and information, to assistance in completing the application, to actual submission of the application. Consular managers must establish clear procedures in working with travel agents to ensure that all processing requirements are met in the most efficient manner possible and that all appearance of impropriety is avoided. Travel agents provide post with an avenue for providing forms and information to the public and for mechanically delivering applications and passports to the visa section. They have no role in the visa review or adjudication process;
- (2) Consular sections may not enter into exclusive arrangements with travel agents for any purpose and may not allow travel agency advertising in the consular section or imply endorsement of a particular travel agency or group of agencies. Lists of preferred agencies are not appropriate;
- (3) Consular managers will generally find it useful to establish channels of communication to the travel industry, both to advise agents and airlines of changes in procedure and to provide periodic training as appropriate. Training may encompass changes in visa regulation or procedures or the use of automated systems such as the Remote Data Entry System (RDS) discussed below. It is not necessary to formally register travel agents other than for purposes of communication or access control; and
- (4) For cases in which personal appearance may be waived according to 9 FAM 41.102, post may find it beneficial to establish procedures to allow travel agents to deliver cases in bulk to the consular section. Any such procedures should be documented in writing. Registration of travel agency couriers may be necessary if special access arrangements are being made.

g. Remote Data Entry System (RDS)–The Remote Data Entry System (RDS) is an application developed by CA to allow third party service providers such as travel agents and bank fee collection agents to perform data

entry for batches of applicants. The system requires consular section review of data prior to its being uploaded into the nonimmigrant visa (NIV) system but can save considerable time for consular sections. CA/EX/CSD can provide additional information on installing and managing RDS. Posts may also consider advising smaller third party service providers of the alternative to RDS offered by on-line form completion with 2-D barcode production, which has the advantage that no software installation or updating is required, only a connection to the Internet.

- h. Referrals–Post must follow procedures outlined in 9 FAM Appendix K for cases submitted through the visa referral system.

## **9 FAM 41.103 PN6 LIMITING APPLICATIONS FROM PREVIOUSLY REFUSED APPLICANTS**

*(CT:VISA-809; 05-09-2006)*

Posts that receive numerous *applications* from *previously refused* applicants may request the Department's concurrence to institute a *written policy limiting requests for appointments from previously refused applicants*. *Under such policies, an applicant who has been refused under INA 214(b) is required to submit a written request to make another NIV application within a one-year time period (a two-year period may be granted to posts in special circumstances). The written request itself is not an application, but a request to be permitted to present an NIV application at a future date with the one-or two-year period. Adjudication of the previously refused applicant's case can only take place in an interview with a consular officer, not based on the written request itself. The number of written requests for an appointment cannot be limited.*

### **9 FAM 41.103 PN6.1 Implementing Policies to Limit Applications from Previously Refused Applicants.**

*(CT:VISA-809; 05-09-2006)*

- a. *Responding to written requests to re-apply for a visa after a previous refusal:*
  - (1) *Posts with VO/F/P-approved policies limiting applications from previously refused applicants should establish written guidelines for internal handling of written requests.*
  - (2) *These guidelines should, at a minimum, address the elements listed below:*
    - (a) *Posts must permit unlimited written requests for re-*

*application within the one-or two-year application period following a 214(b) refusal, and each written request must be reviewed by and responded to by a consular officer (not EFM, contract, or local staff).*

- (b) Key factors for determining whether to approve a request for an appointment or opportunity to submit another application within the one-or two-year period must be established in writing. Possible factors in posts' decision might include the availability of new information not previously presented or considered in the case, emergency or humanitarian cases, facilitation of student or business travel, significant U.S. interest in the case, or other post-specific circumstances.*
- (c) All applicants refused under 214(b) must be informed of the written re-application policy in writing at the time of visa refusal. A sample information sheet is provided in 9 FAM 41.103 Exhibit I. Post outreach, Web site and, if applicable, call center scripts must also provide information on the re-application policy.*
- (d) Posts should track the number of written requests for an appointment from applicants previously refused visas, as well as the specific reviewing officer's decision with regard to each request. Supervisors and heads of the consular section must track written request procedures to ensure proper oversight of the program.*
- (e) All visa-issuing posts in the country must implement the same written re-application procedures.*

*b. Normal NIV processing:*

- (1) Posts with VO/F/P-approved policies limiting applications from previously refused applicants must ensure that applicants permitted to re-apply are treated as other NIV applicants would be, particularly with regard to adherence to personal appearance, biometric data collection and refusal notification requirements and procedures.*
- (2) Previously refused applicants are required to be physically present for their re-application and are subject to bio-visa and fingerprint requirements.*
- (3) MRV fees must be collected in such cases.*
- (4) Previously refused applicants must be informed orally of any subsequent refusal per 9 FAM 41.121 PN1.2-1, as well as receive written notice of the legal basis for the denial pursuant to the requirements of INA 212(b), except in limited cases involving*

*212(a) or (3) denials where revealing the ground of the denial could compromise sensitive U.S. law enforcement or security interests.*

## **9 FAM 41.103 PN6.2 Requesting Department Approval of a Limited Re-Application Policy**

*(CT:VISA-809; 05-09-2006)*

*Posts desiring to implement a policy limiting applications from previously refused applicants should carefully consider the possible workload implications of such a decision, particularly if an appointment system is available to help manage the number of NIV applications handled. Post's evaluation of the potential effectiveness of such a policy should carefully balance the possible time-savings from reducing the number of repeat applicants with the resources required to enforce re-application limits and handle the written requests for another appointment. Requests for an application limiting policy should be submitted to post's VO/F/P liaison for the Department's approval prior to implementation, and should address the following:*

- (1) The post's rationale for requesting a limited re-application policy;*
- (2) A brief description of post arrangements for handling written re-application policies (who will handle requests for appointments, how requirements for personal appearance and collection of biometrics are being met, adherence to guidelines listed in 9 FAM 41.103 PN6.1 (a), etc.; and*
- (3) A copy of post-specific written explanation of the program (see 9 FAM 41.103 PN6.1 (a)(3).*